

**COMMUNICATION TO THE AARHUS CONVENTION'S
COMPLIANCE COMMITTEE**

I. Information on correspondent submitting the communication

Full name of submitting organization or person

Terence Patrick Ewing

Permanent address:

London
United Kingdom

Telephone 44 020 7419 1064 Fax 44 020 7419 1064 Email eh_org@yahoo.com

II. Party concerned

Name of the State Party concerned by the communication

United Kingdom (limited to England and Wales)

III. Facts of the communication

PUBLIC PARTICIPATION IN DEVELOPMENTS INVOLVING CROSSRAIL

1. The Town and Country Planning Act 1990, in particular sections 70 to 75, and the Town and Country Planning General Regulations 1992 governs Planning applications in England and Wales.
2. Planning applications in England and Wales concerning listed buildings and conservation areas are also governed by the Planning (Listed Building and Conservation Areas) Act 1990, in particular sections 10-19 as applied to conservation areas by section 74, along with the Planning (Listed Buildings and Conservation Areas) Regulations 1990.
3. Third party objectors have the right to make written representations to planning applications made to local authorities for the general planning permission under regulation 19(1) of the Town and Country Planning (General Development Procedure) Order 1995.
4. Third party objectors also have the right to make written representations to applications for listed building consent or conservation area consent in respect of planning applications regarding listed buildings or in conservation areas under

regulation 5(2) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990.

5. In respect of general planning applications, notices are required to be publicized and notices being required to be displayed on or near the site under section 65 of the Town and Country Planning Act 1990 and regulation 6(1)-(5) and 8 of the Town and Country Planning (General Development Procedure) Order 1995.
6. In respect of listed buildings and conservation areas notices, advertisements are required to be placed in local newspapers along with notices again being required to be displayed on or near the site under section 73 of the Planning (Listed Building and Conservation Areas) Act 1990 and regulation 5(1) and (2) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990.
7. Many planning applications are considered on the papers by local authorities, and it is usually the most important ones or ones that raise planning related issues such as planning applications in respect of listed buildings or conservation areas or green belt or applications in protected environmental areas that are referred to planning committees.
8. These planning committees are made up from members drawn from local elected councillors of the local authority concerned, with an elected chair.
9. The local authority planning officer prepares a report which the committee may follow or not, and there is a vote at the end of the presentation by the planning officer or consideration of the written report.
10. The procedures adopted at each local authority's planning Committees are matters for the local authorities themselves and are usually set out in their individual Standing Orders.
11. Obviously, these vary from local authority to local authority and there are no uniform set of rules and regulations.
12. There are currently no statutory rights for third party objectors to be permitted to orally address local authority Planning Committees contained in any of the various Local Government Acts, in particular the Local Government Act 1972, Local Government Act 1974 and the Local Government Act 2000, and there would appear to be no common law right to do so either.
13. However, most local authorities permit members of the public who give notice prior to the Committee meetings to address the committee, along with the applicant. Usually both parties have a five-minute slot, but if there is more than one objector, the time is split between them, or the chair of the planning committee selects which objector should be heard.
14. Other local authorities such as Wandsworth Council and the City of Westminster Council have a policy of not permitting any oral representations to be made to the councillors at planning committee meetings by either the Applicant or the third party objectors.

15. However, even Wandsworth Council and the City of Westminster Council are required to accept written objections and to take them into account, as are all other local authorities under regulation 19(1) of the Town and Country Planning (General Development Procedure) Order 1995 and regulation 5(2) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990.
16. On 18 May 2005 the Government introduced the Crossrail Bill in the House of Commons, which authorized the building of a cross-rail link from Maidenhead Berkshire and Heathrow Airport in the London Borough of Hillingdon across central London mostly underground to Shenfield in Essex and Abbey Wood in the London Borough of Greenwich.
17. The only public participation that took place was regarding the Cross Rail Bill itself, with petitions to the House of Lords etc., including one from the City of Westminster Council.
18. After its passage through the House of Commons and the House of Lords spread over three sessions, the Crossrail Bill duly received Royal Assent on 22 July 2008 and became an Act of Parliament.
19. Clause 10 of the Crossrail Bill proposed that planning permission be deemed to be given for the purposes of authorized works under the Act, and makes provision for lodging of statements in Parliament relating to any required environmental impact assessments.
20. Schedule 8 paragraph 1(4)(b)(c) of the Crossrail Bill also proposed to disapply the requirements for obtaining Conservation Area Consent and section 74 of the Planning (Listed Building and Conservation Areas) Act 1990.
21. Schedule 8 paragraph 1(1) of the Crossrail Bill also proposed to disapply listed buildings and the need for listed building consent, and contained a list of buildings affected either by demolition or partial alteration.
22. Section 10 of the Crossrail Act 2008 currently provides that planning permission is deemed to be given for the purposes of authorized works under the Act, and makes provision for lodging of statements in Parliament relating to any required environmental impact assessments.
23. Schedule 9 paragraph 1(4)(b)(c) of the Crossrail Act 2008 also currently disapplies the requirements for obtaining Conservation Area Consent and section 74 of the Planning (Listed Building and Conservation Areas) Act 1990.
24. Schedule 9 paragraph 1(1) of the Crossrail Act 2008 also currently disapplies listed buildings and the need for listed building consent, and contains a list of buildings affected either by demolition or partial alteration.
25. It isn't possible to judicially review or subject an Act of Parliament to any legal challenge, although there are limited avenues of challenge if an Act of Parliament is

in breach of a “convention right” under the Human Rights Act 1998 and a “declaration of incompatibility” may be obtained under section 4(1) of that Act.

26. At a number of places, such as in several venues in Oxford Street, including the junction with Charing Cross Road, stations were proposed to be built to serve the cross rail link.
27. In the case of the Tottenham Court Road station, this was also to link with the present London Underground station.
28. On the site at the junction of Charing Cross Road and Oxford Street was a Victorian terrace of shops which were held to have made a “positive contribution” to the Soho Conservation Area in the City of Westminster for the purposes of the then PPG 15 and the replacement PPS 5 relating to control of development in conservation areas.
29. Further down Charing Cross Road, there was the adjoining Astoria building, which had been used for entertainment venues and had hosted a number of alternative life style club events.
30. The building again made a “positive contribution” to the Soho Conservation Area of the City of Westminster, and provided social facilities for sections of the community relating to the holdings of social venues.
31. The whole of the development site is within the boundary of the Soho Conservation Area and also adjoins the Hanways Street Conservation Area on the opposite site of Oxford Street and the Bloomsbury Conservation Area of the London Borough of Camden on the other side of St. Giles Square.
32. If section 10 and schedule 9 paragraph 1(4)(b)(c) of the Crossrail Act 2008 hadn’t been enacted and in force, applications for planning and Conservation Area Consent would have had to have been submitted to demolish the former buildings on site and build the new crossrail station in their site.
33. This would have undergone scrutiny by Westminster City Council’s Planning Department, and the public and third party objectors would have been able to have lodged any written objections to any proposed schemes.
34. I would have wished to have lodged such objections to the demolition to the buildings presently on the site of the junction of Charing Cross Road and Oxford Street and possibly have sought a legal challenge if planning permission and Conservation Area Consent had been granted.
35. In due course, the matter would have been considered by Westminster City Council’s Planning Applications Committee, which would have taken into account the public’s written representations in arriving at their decision as to whether or not to grant planning and Conservation Area Consent.
36. In mid 2010 until early 2011, the Victorian buildings on the corner of Oxford Street and Charing Cross Road and also further down Charing Cross Road, including the

Astoria building were demolished or dismantled without any planning permission or Conservation Area Consent and thereby any public participation being involved.

37. It isn't known whether any statements relating to environmental impact were filed under section 10 of the Crossrail Act 2008.
38. The present cross-rail station is presently under construction and will be completed sometime in 2011.

LACK OF PUBLIC ACCESS TO JUSTICE IN DEVELOPMENTS INVOLVING CROSSRAIL

1. In the absence of any planning and Conservation Area Consent applications, no members of the public were able to make an application for Judicial Review under CPR Part 54, irrespective of whether such an application would have been compliant with article 9.2 and 9.3 of the Convention or not.
2. The issue of Judicial Review compliance with article 9.2 and 9.3 of the Convention is currently before the Committee in application no. ACCC/C/2011/60.
3. As a third party objector has no right of appeal to the Planning Inspector, the only current way in which an aggrieved third party objector may seek to challenge the grant of local authority planning permission, listed building or conservation area consent is by applying for permission for Judicial Review to the High Court under CPR Part 54.
4. However, for such an application to be made, there must have been a grant of planning permission or Conservation Area Consent to challenge in the first place.
5. The application has to be brought within 3 months of the decision complained of, and permission is required from a High Court judge to bring the application under CPR Part 54.4.
6. The evidence is given by written Witness Statement and exhibited documents, and the opposing parties usually submit a Skeleton Argument each setting out their respective positions as to the law and principles applicable.
7. The court has the power to refuse the application, or to grant it by issuing a Quashing Order, a Mandatory or Prohibitory Order or even a Declaration or Injunction in appropriate cases under CPR Part 54.2(a)-(d).
8. The Administrative Court has a complete discretion whether or not to grant any relief, and even if the Claimant has made out a case for relief, the court may refuse to grant it if it feels appropriate to do so.
9. Either unsuccessful party may seek permission to appeal thereafter to the Court of Appeal, and if granted and unsuccessful, may seek further permission to appeal to the Supreme Court.

10. Additionally, where there have been applications for planning permission and Conservation Area Consent, the decision notice is issued under regulation 22 of the Town and Country Planning (General Development Procedure) Order 1995 in respect of general planning applications and regulation 3(5) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 in respect of applications concerning listed buildings or in conservation areas.
11. If there has been a committee meeting, there will also be minutes of the meeting that is usually approved by the councillors at the next subsequent meeting of the committee.
12. Applicants for planning applications that are refused by local authorities, either on paper or after referral to a Planning Committee of local councillors have a statutory right to appeal to the Planning Inspectorate and the appeals are heard by appointed Planning Inspectors appointed by the Secretary of State.
13. This is provided by section 78(1) of the Town and Country Planning Act 1990 and regulation 23 of the Town and Country Planning (General Development Procedure) Order 1995 in respect of general planning applications.
14. The appeal is determined under section 79 of the Town and Country Planning Act 1990.
15. Similar rights of appeal are also given to applicants in respect of the refusal of listed building and conservation area consent under section 20 and 21 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and regulation 8 of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 as applied by section 74 of that Act.
16. The appeal is determined under section 22 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
17. Such appeals may be considered on paper by the Planning Inspector with a site visit under the Town and Country Planning (Appeals) Written Representations Procedure (England) Regulations 2009, or by an informal oral hearing under the Town and Country Planning (Hearings Procedure) (England) Regulations 2000.
18. In respect of important applications, the Planning Inspector may also hold a public enquiry under the Town and Country Planning (Inquiries Procedure) (England) Regulations 2000.
19. At both informal hearings and public enquiries, the Planning Inspector is provided by the local authority appealed against with copies of all of the written third party objections.
20. Such objectors are notified by the local authority of such an appeal, and may apply to the Inspector at the hearing to speak.
21. The Inspector has discretion whether to allow this, but usually permits all third party objectors to speak and make oral submissions.

22. In some cases, individual objectors may be made parties and obtain what is termed rule 6 status.
23. The Planning Inspector usually carries out a site visit, and the appeal is a total rehearing of the planning application both on the facts and on the law and policies applicable.
24. Although the Planning Inspector takes into account the local authority's decision to refuse planning permission or listed building or conservation area consent, he isn't bound by this, and is free to arrive at his own decision completely independently.
25. At the conclusion of the appeal, the Planning Inspector issues a formal decision, usually a few weeks later, which sets out all of his findings of fact and application of the relevant domestic law and policies and how he has arrived at his decision to grant or refuse the appeal.
26. There are usually no costs awarded against the applicant at hearings before Planning Inspectors, unless the applicant has behaved unreasonably.
27. In the majority of cases, the decision of the Planning Inspector is final, as provided for under section 79(5) of the Town and Country Planning Act 1990.
28. A "person" who is "aggrieved", which could be an unsuccessful appellant, or a third party objector if the appeal has been allowed, may make an application to the High Court under section 288 of the Town and Country Planning Act 1990 within six weeks of the issue of the Planning Inspector's decision.
29. Similar provisions for challenge also lie in respect of listed buildings and conservation areas under section 63 of Planning (Listed Buildings and Conservation Areas) Act 1990, again within six weeks of the issue of the Planning Inspector's decision.
30. This statutory challenge can only be made if there is an error of law made by the Planning Inspector.
31. Either unsuccessful party may seek permission to appeal thereafter to the Court of Appeal, and if granted and unsuccessful, may seek further permission to appeal to the Supreme Court.
32. An aggrieved objector may apply to the Secretary of State to determine himself any planning application or planning decision once made, subject to time limits under section 77(1) of the Town and Country Planning Act 1990.
33. If called in by the Secretary of State, such applications are then determined by the Planning Inspector, who conducts proceedings in the same manner as appeals made by an aggrieved applicant.
34. However, such applications are rarely granted, and the Secretary of State as a strict criteria for determining such applications.

35. The decision of the Secretary of State as to whether to determine himself a planning application is entirely at his discretion and there is no automatic right to have any planning application or decision “called in” for determination.
36. A similar provision also applies to applications for listed building and conservation area consent under section 12(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, and again the Secretary of State has the same discretion as under section 77(1) of the Town and Country Planning Act 1990 as to whether to determine the application himself.

IV. Nature of alleged non-compliance

PUBLIC PARTICIPATION IN DEVELOPMENTS INVOLVING CROSSRAIL

1. The Applicant contends that the failure of the UK government to permit public participation in the Crossrail planning process, whether by written or oral representations by removing the requirement for the submission of planning and Conservation Area Consent and Listed Building Consent applications under section 10 and schedule 9 paragraph 1(1) and (4)(b)(c) of the Crossrail Act 2008 was in breach of articles 3.1, 3.9 and 6.7 of the Convention.
2. Article 3 1. provides that the party shall,

“take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the”-----, “public participation and access-to-justice provisions of this convention,”-----“to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.”
3. Article 3 9. provides that the party shall provide for the,

“possibility to participate in decision-making”
4. Article 6 7. provides that,

“Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, comments, information, analyses or opinions that it considers relevant to the proposed activity.”

LACK OF PUBLIC ACCESS TO JUSTICE IN DEVELOPMENTS INVOLVING CROSSRAIL

1. The Applicant complains that the failure of the UK government to contends that the actions of the UK government in removing the requirement for the submission of planning and Conservation Area Consent and Listed Building Consent applications

under section 10 and schedule 9 paragraph 1(1) and (4)(b)(c) of the Crossrail Act 2008, is in breach of article 3.1, and article 9.2, 3, and 4 of the Convention.

2. Article 3 1. provides that the party shall,

“take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the”-----, “public participation and access-to-justice provisions of this convention,”-----“to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.”

3. The Applicant contends that section 10 and schedule 9 paragraph 1(1) and (4)(b)(c) of the Crossrail Act 2008 is a denial of the right to a “review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission.”

4. In the event that any planning permission, Conservation Area Consent or Listed Building Consent had been refused in the absence of section 10 and schedule 9 paragraph 1(1) and (4)(b)(c) of the Crossrail Act 2008 and any appeals had been made by Crossrail, third party objectors and members of the public would have been able to have participated in any public enquiry and given evidence.

5. Article 9 2. provides that,

“Each party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest

or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission”-----

-

6. Any third party objector would also satisfy the definition of “the public” and the “public concerned” in article 2.

7. Article 2 4. provides,

““The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;”

8. Article 2 5. provides,

““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.”

9. Article 9 2. further provides that,

“What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of paragraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.”

10. Article 9 3. provides that,

“In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.”

11. Article 9 4. provides that,

“In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs”-----“, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.”-----

12. The Applicant contends that this right is absolute and not subject to any restrictions or restraints.
13. It is contended that members of the public were therefore denied “access to an administrative or judicial procedures to challenge acts by private persons and public authorities which contravene provisions of its national law relating to the environment” by section 10 and schedule 9 paragraph 1(1) and (4)(b)(c) of the Crossrail Act 2008.
14. The Applicant contends that this is the case relating to the current right to seek Judicial Review, notwithstanding that there may be arguments relating to its compatibility with the Convention which are currently being raised in application no. ACCC/C/2011/60.

15. This would result from the complete lack of any planning permission, Conservation Area Consent or Listed Building Consent being granted by any of the local authorities concerned, with the result that there was no remedy at all available to third party objectors and members of the public.
16. This is the only current remedy available to an aggrieved third party objector under CPR Part 54 in respect of the grant of planning permission that has been granted either on the papers or after a full planning committee hearing.

V. Provisions of the Convention relevant for the communication

Article 2 – DEFINITIONS

Article 2 4. ““The public” means one or more natural or legal persons, and, in accordance with national legislation or practice, their associations, organizations or groups;”

Article 2 5. ““The public concerned” means the public affected or likely to be affected by, or having an interest in, the environmental decision-making; for the purposes of this definition, non-governmental organizations promoting environmental protection and meeting any requirements under national law shall be deemed to have an interest.”

Article 3 – GENERAL PROVISIONS

Article 3 1. “Each party shall take the necessary legislative, regulatory and other measures, including measures to achieve compatibility between the provisions implementing the”-----,“public participation and access-to-justice provisions of this convention,”-----“to establish and maintain a clear, transparent and consistent framework to implement the provisions of this Convention.”

Article 3 9. “possibility to participate in decision-making”

Article 6 – PUBLIC PARTICIPATION IN DECISIONS ON SPECIFIC ACTIVITIES

Article 6 7. “Procedures for public participation shall allow the public to submit, in writing or, as appropriate, at a public hearing or inquiry with the applicant, comments, information, analyses or opinions that it considers relevant to the proposed activity.”

Article 9 – ACCESS TO JUSTICE

Article 9 2. “Each party shall, within the framework of its national legislation, ensure that members of the public concerned

(a) Having a sufficient interest

or, alternatively,

(b) Maintaining impairment of a right, where the administrative procedural law of a Party requires this as a precondition,

have access to a review procedure before a court of law and/or another independent and impartial body established by law, to challenge the substantive and procedural legality of any decision, act or omission subject to the provisions of article 6 and, where so provided for under national law and without prejudice to paragraph 3 below, of other relevant provisions of this Convention.

What constitutes a sufficient interest and impairment of a right shall be determined in accordance with the requirements of national law and consistently with the objective of giving the public concerned wide access to justice within the scope of this Convention. To this end, the interest of any non-governmental organization meeting the requirements referred to in article 2, paragraph 5, shall be deemed sufficient for the purpose of paragraph (a) above. Such organizations shall also be deemed to have rights capable of being impaired for the purpose of subparagraph (b) above.”

Article 9 3. “In addition and without prejudice to the review procedures referred to in paragraphs 1 and 2 above, each Party shall ensure that, where they meet the criteria, if any, laid down in its national law, members of the public have access to administrative or judicial procedures to challenge acts and omissions by private persons and public authorities which contravene provisions of its national law relating to the environment.”

Article 9 4. “In addition and without prejudice to paragraph 1 above, the procedures referred to in paragraphs”-----“, 2 and 3 above shall provide adequate and effective remedies, including injunctive relief as appropriate, and be fair, equitable, timely and not prohibitively expensive.”-----

VI. Use of domestic remedies or other international procedures

1. There wouldn't appear to be any current domestic remedies for any of the alleged breaches as an Act of Parliament cannot be challenged in the courts, apart from the limited avenues of challenge if an Act of Parliament is in breach of a “convention right” under the Human Rights Act 1998 and a “declaration of incompatibility” may be obtained under section 4(1) of that Act.
2. It is also unclear how far other similar developments to Tottenham Court Road have progressed as there is little data available.

VII. Confidentiality

The Applicant has no comments concerning confidentiality.

VIII. Supporting documentation

1. Town and Country Planning Act 1990
2. Town and Country Planning (General Development Procedure) Order 1995
3. Town and Country Planning General Regulations 1992
4. Planning (Listed Building and Conservation Areas) Act 1990
5. Planning (Listed Buildings and Conservation Areas) Regulations 1990
6. Judicial Review procedure – CPR Part 54 and notes from current edition of the Supreme Court Practice 2011 (White Book volume 1)
7. Crossrail Bill
8. Crossrail Act 2008
9. Planning Policy Guidance 15 (PPG 15) now replaced by PPS 5
10. Planning Policy Statement 5 (PPS 5)
11. Web page – Westminster City Council Soho Conservation Area
<http://www.westminster.gov.uk/services/environment/planning/conservationlistedbuildings/areaprofiles/soho/>
12. Map of Soho Conservation Area
13. Web page – Westminster City Council Hanways Street Conservation Area
<http://www.westminster.gov.uk/services/environment/planning/conservationlistedbuildings/areaprofiles/hanwaystreet/>
14. Map of Hanways Conservation Area
15. Web page – Transport for London Tottenham Court Road station
<http://www.tfl.gov.uk/corporate/projectsandschemes/2355.aspx>
16. Web page – Crossrail unveils striking new Tottenham Court Road station design to transform West End and Soho
<http://www.crossrail.co.uk/news/press-releases/crossrail-unveils-striking-new-tottenham-court-road-station-design-to-transform-west-end-soho>
17. Screenshot – Crossrail picture of new Tottenham Court Road station
18. Web page – London Connections – rebuilding Tottenham Court Road station

<http://londonconnections.blogspot.com/2008/07/rebuilding-tottenham-court-road-station.html>

19. Web page – London Reconnections – Crossrail at Tottenham Court Road

<http://londonreconnections.blogspot.com/2009/07/crossrail-at-tottenham-court-road.html>

20. Web page – Arthur Lloyd.co.uk – The Music Hall and Theatre History Website – Astoria and Charing Cross demolition

21. <http://www.arthurlloyd.co.uk/AstoriaTheatreCharingCrossRoad.htm>

22. Photographs

(a) Former junction of Charing Cross Road and Oxford Street 1

(b) Former junction of Charing Cross Road and Oxford Street 2

(c) Former Astoria theatre 1

(d) Former Astoria theatre 2

(e) Former Astoria theatre 3

(f) Grade II listed Dominion cinema opposite in Tottenham Court Road

(g) Buildings opposite development site at junction of Tottenham Court Road and Oxford Street

IX. Summary

PUBLIC PARTICIPATION IN DEVELOPMENTS INVOLVING CROSSRAIL

1. The Applicant complains that section 10 of the Crossrail Act 2008 provides that that planning permission is deemed to be given for the purposes of authorized works under the Act.
2. The Applicant further complains that schedule 8 paragraph 1(1) and (4)(b)(c) of the Crossrail Act 2008 dissapplies the requirements for obtaining Conservation Area Consent and section 74 of the Planning (Listed Building and Conservation Areas) Act 1990 and Listed Building Consent.
3. The Applicant contends that this removes the right to public participation in breach of article 3 1., 3 9. and article 6 7.

LACK OF PUBLIC ACCESS TO JUSTICE IN DEVELOPMENTS INVOLVING CROSSRAIL

1. The Applicant complains that section 10 of the Crossrail Act 2008 provides that that planning permission is deemed to be given for the purposes of authorized works under the Act.
2. The Applicant further complains that schedule 8 paragraph 1(1) and (4)(b)(c) of the Crossrail Act 2008 dissapplies the requirements for obtaining Conservation Area Consent and section 74 of the Planning (Listed Building and Conservation Areas) Act 1990 and Listed Building Consent.
3. The effect of this is that there have been no planning or Conservation Area Consents or Listed Building Consents to challenge from any of the local authorities concerned.
4. The Applicant contends that this is a denial of the right to public access to environmental justice in breach of Article 3 1., and article 9 2., 9 3., and 9 4.
5. Although there may be nothing practical that can now be done in relation to the Crossrail scheme and the lack of public participation and access to environmental justice, the Applicant is extremely concerned that a Bill like the Crossrail Bill was enacted in the first place, thereby denying public participation in the planning process and denying access to environmental justice.
6. It would seem that section 10 and schedule 8 paragraph 1(1) and (4)(b)(c) of the Crossrail Act 2008 were enacted to completely circumvent the current planning process and avoid public scrutiny of the plans for the proposed scheme.
7. The Applicant is therefore keen to see that such draconian powers are not repeated in the future in relation to any subsequent schemes or legislation.
8. There is the possibility that similar provisions might be enacted in the case of the proposed high speed 2 (HS2) rail link from London to the Midlands and eventually to Scotland.

V. Signature

Signed

Mr Terence Ewing

XI. Address

Secretary to the Aarhus Convention
United Nations Economic Commission for Europe
Environment and Human Settlement Division
Room 332, Palais des Nations
CH-1211 Geneva 10, Switzerland

Dated 21 August 2011